

Application No. 10/650,038  
Docket No. 0902-005

### REMARKS

Claims 9-11, 30-32, 35 and 40-79 are pending in the application. Claim 8 has been canceled without prejudice or disclaimer by the foregoing amendment; claims 1-7, 12-29, 33, 34, 36-39 having been canceled previously. Claims 9-11 have been amended to be placed in an independent form. Claims 30 and 32 have been amended to reflect the cancellation of claim 8. Claims 35 and 40 have also been amended by the foregoing amendment. Claims 41, 42 and 44-52 have been reintroduced (being withdrawn previously) with claims 44, 45, 47-49 and 51 having been amended by the foregoing amendment to reflect the cancellation of claim 8. New claims 53-79 have been added by the foregoing amendment. No new matter has been introduced as a result of these amendments to the claims.

The specification at page 20, lines 27 has been amended to correctly identify *filter* as element 87 as indicated by the Examiner.

Claim 40 stands rejected 35 U.S.C. § 102(a) as being anticipated by *Near-Infrared Indocyanine Green Video Angiography* (Raabe). Claims 8, 30, 31, 35 and 43 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 5,865,829 (*Kitajima*) in view of U.S. Patent Application Publication No. US 2005/0182321 A1 (*Frangioni*). Claim 9 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over *Kitajima* in view of *Frangioni*. Claims 10 and 11 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over *Kitajima* in view of *Frangioni* and further in view of U.S. Patent No. 6,371,908 (*Furusawa*). Claim 32 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over *Kitajima* in view of *Frangioni* and further in view of JP 10325798A (*Imaizumi*). Claim 40 stands rejected under

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35 U.S.C. § 103(a) as being unpatentable over WO01/22870 A1 (*Chari*) in view of U.S. Patent No. 6,721,590 (*Ohishi*).

The subject matter of claim 40 is entirely attributable to Andreas Raabe as evidenced by an affidavit signed by the inventors and being submitted concurrently. Therefore, the Raabe article does not qualify as a 102(a) reference.

Claim 9 recites, *inter alia*, a microscopy system wherein a display system is adapted to sequentially display plural fluorescence images forming a subseries of recorded images.

In rejecting claim 9, the Office Action recognizes that Kitajima fails to disclose the display system being configured for repeatedly displaying the series of plural second representations in superposition with the first superposition. The Examiner relies on Frangioni to assert that it would have been obvious to one of ordinary skill in the art to incorporate the video ability of Frangioni into the still picture system of Kitajima.

While Kitajima includes an image memory, Frangioni does not include an image memory. The modification of the still-picture system of Kitajima with the video-system of Frangioni would result in removing the memory function and therefore, the ability to repeatedly display the series of fluorescence images. Therefore, the modification of Kitajima by Frangioni fails to disclose claim 9.

At least for these reasons, claim 9 is allowable over the Kitajima/Frangioni combination.

Claim 10 recites, *inter alia*, a microscopy system wherein a controller is adapted to select a subseries based on intensities of the fluorescence images.

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In rejecting claim 10, the Office Action recognizes that the Kitajima/Frangioni fails to disclose a controller configured to select the subset of the set of first image data from the set of first image data based on intensities of the plural images represented by the first image data. The Examiner relies on the teachings of Furusawa for allegedly overcoming this deficiency.

The deficiencies of the Kitajima/Frangioni combination are highlighted above with respect to claim 9. Furusawa fails to overcome these deficiencies. Furthermore, Furusawa pertains to a selection of image regions but not of image subseries. A selected image region is a selected portion of one image. A selected image subseries, on the other hand, is a number of images selected from a larger number of images.

Therefore, the Kitajima/Frangioni/Furusawa combination fails to disclose claim 10. At least for these reasons, claim 10 is allowable over the Kitajima/Frangioni/Furusawa combination.

Claim 11 recites, *inter alia*, a microscopy system wherein a controller is adapted to select a subseries based on differences of intensities of the fluorescence images.

In rejecting claim 11 (as with claim 10), the Office Action recognizes that the Kitajima/Frangioni fails to disclose a controller configured to select the subset of the set of first image data from the set of first image data based on intensities of the plural images represented by the first image data. The Examiner relies on the teachings of Furusawa for allegedly overcoming this deficiency.

The deficiencies of the Kitajima/Frangioni combination are highlighted above with respect to claim 9 and those of the Kitajima/Frangioni/Furusawa are highlighted above with respect to claim 10. Furthermore, Furusawa pertains to a selection of image regions but not of

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image subseries. A selected image region is a selected portion of one image. A selected image subseries, on the other hand, is a number of images selected from a larger number of images.

Therefore, the Kitajima/Frangioni/Furusawa combination fails to disclose claim 11. At least for these reasons, claim 11 is allowable over the Kitajima/Frangioni/Furusawa combination.

Claim 35 recites, *inter alia*, a microscopy method wherein a series of fluorescence images is recorded for a time period and the series is displayed only after lapse of the recording time period.

In rejecting claim 35, the Office Action relies upon Kitajima which pertains to a single picture display. The Examiner asserts that there is an inherent time delay between recording the images on the camera and displaying these images on the display system. However, the intrinsic time delay is certainly not as large as twice the inverse frame rate which corresponds to the time needed for recording a series of (at least two) images.

Accordingly, claim 35 is not obvious over Kitajima in combination with Frangioni. At least for these reasons, claim 35 is allowable over the Kitajima/Frangioni combination.

Claim 40 recites, *inter alia*, a treatment method wherein an aneurysm is clipped, both visual and fluorescence images are taken, blood flow in a parent artery is assessed on the basis of both images, accumulation of indocyanine green (ICG) in the aneurysm is assessed on the basis of the fluorescence image, and on the basis of the assessment, an assessment is made as to whether the clipping interrupted blood flow into the aneurysm completely.

The Office Action relies on Chari which pertains to ICG as a means for intra-operative angiography and on Ohishi which pertains to a treatment of aneurysms.

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Ohishi does not advocate clipping of the aneurysm but the introduction of an occluding device thereinto. Ohishi is entirely focused on how to render images of an occluding device introduced into the aneurysm. As the aneurysm is being occluded by this device, blood could not flow into the aneurysm and consequentially, a fluorescent dye entrained in the blood could not flow into the aneurysm.

One of ordinary skill in the art relying on Ohishi cannot assume that ICG might accumulate in the aneurysm which is already filled with the occluding device.

Chari, on the other hand, discloses a surgical procedure wherein fluorescence is used to assess the halting of internal bleeding into the surrounding tissue (p. 7, lines 5-7). Chari fails to specifically suggest that accumulation of ICG in the aneurysm sac should be observed.

Accordingly, claim 40 is not obvious over the Ohishi/Chari combination. At least for these reasons, claim 40 is allowable.

The remaining claims, all of which depend on one of the allowable independent claims, are also allowable.

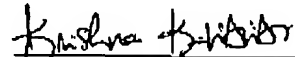
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All of the rejections having been overcome, it is believed that this application is in condition for allowance and a notice to that effect is solicited. Should the Examiner have any questions with respect to expediting the prosecution of this application, he is urged to contact the undersigned at the number listed below.

Respectfully submitted,

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